

**AT AUCKLAND**

<b>Appellants:</b>	<b>BF (Pakistan)</b>
<b>Before:</b>	L Moor (Member)
<b>Counsel for the Appellants:</b>	D Mansouri-Rad
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	15 July 2014
<b>Date of Decision:</b>	31 July 2014

---

**DECISION**

---

[1] These are appeals against a decision of a refugee and protection officer, declining to grant refugee status and/or protected person status to the appellants, citizens of Pakistan, of the Ahmadiyya Muslim faith.

**INTRODUCTION**

[2] The appellants are a father (“the father”) and his two daughters (“the elder daughter” and “the younger daughter”).

[3] The appellants claim that as Ahmadis they will be unable to freely manifest their religion in Pakistan, face discrimination in employment and education and are at risk of serious harm from the state and members of the Sunni Muslim population.

[4] The appeals turn on whether the public assertion of their faith is at the core of their right to manifest their religion and whether they face a real chance of being identified as Ahmadi.

[5] For the reasons that follow, the appeals succeed.

[6] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

### **THE APPELLANT'S CASE**

[7] The account which follows is that given by the appellants at the appeal hearing. It is assessed later.

[8] The Tribunal heard evidence from all three appellants.

#### **The Father's Evidence**

[9] The father was born in September 1967 in [Z city]. He was born into an Ahmadi family. His grandfather had converted to the Ahmadiyya religion.

[10] At around age 10, the father remembers being told by his parents not to disclose his religion or discuss his faith outside the home. After receiving lessons from the Islamic studies teacher condemning the Ahmadiyya religion, the father's parents moved him to a high school run by an Ahmadiyya community member, where he completed his final year of schooling.

[11] After the father's family relocated to Lahore in 1978, the father and his brothers would attend daily prayers at an Ahmadiyya members' community house and Friday prayers at Bait-al Noor mosque.

[12] Throughout his upbringing, the father was actively involved in the Ahmadiyya community. In 1988, he was elected *Zaeen Halqa* or male youth leader in his Ahmadiyya Muslim Jama't. He served in this leadership role for four years. In it, he coordinated with members, collected donations and organised meetings, training programmes, sports rallies and voluntary aid activities. He was reappointed to this position in 2000, for three years. After the Ahmadiyya community's global spiritual leader sought refuge in the United Kingdom in 1984, the father was involved in distributing audio cassettes containing the leader's weekly Friday sermons. This was before the era of satellite television.

[13] In 1996, the father married his wife, also an Ahmadi. In 1997 and 2000, respectively, their two daughters were born. In 2005 and 2007, respectively, their two sons were born.

[14] In 1992, the father completed a bachelor of commerce degree and in 1996 he gained his masters of business administration (MBA). Throughout his studies, he did not disclose his faith to anyone. However, after finishing, a friend identified him as an Ahmadi through the satellite dish at his house, which were generally only in houses of Ahmadi. He never spoke to the father again.

[15] In 1991, the father commenced employment at [ABC Ltd] as a marketing executive. He did not disclose his faith to his colleagues and was able to work undetected for many years. He was the only member of the Ahmadiyya community working at [ABC Ltd]. He was aware that other Ahmadis in the wider business group had lost their jobs after their faith was identified.

[16] In 2008, the father changed offices and started attending Friday prayers at the Dar Al Zakar mosque, as it was closer.

### **2010 Lahore Mosque Bombings**

[17] In May 2010, the Dar Al Zakar mosque and Bait-al Noor mosque were attacked by Sunni militants. At the time, the father was travelling to Dar Al Zakar mosque. He was running late due to traffic and arrived five minutes after the attack had commenced.

[18] The father called the Ahmadiyya community district level leader and informed him that the Dar Al Zakar mosque was under attack. He learnt that the Bait-al Noor mosque was also under attack. His leader advised him to immediately leave the area.

[19] The father returned to the office. It soon became apparent to his colleagues that something serious had occurred. The father could not disguise his terror. His colleagues asked him what had happened and he told them that his mosque was under attack. Some colleagues felt sorry for him, while others said that Ahmadis were non-Muslims and needed to be killed.

[20] The father then returned home to see his children and wife before going to visit the Dar Al Zakar mosque. There were no police at the mosque, but community members were only allowing verified community members in. On entry, the father saw blood everywhere, bullet holes in the walls and the bodies of dead community members. At sunset, he prayed with other Ahmadis outside in the yard. The father then donated blood for the injured and provided moral support for the families of the victims at the hospital.

[21] In the subsequent days, the father provided food to the injured and their families. He also attended a meeting in Dar Al Zakar mosque about new security measures. Ahmadiyya community members in Lahore were issued with identification cards for entry into the mosques. Friday prayers continued, but were greatly reduced in time.

[22] Following the bombings, the father became increasingly ostracised by his colleagues. He stopped eating in the shared dining room and took his own crockery, pre-empting any call for him not to use the shared crockery. Feeling increasingly uncomfortable, he requested, and was granted, a transfer to Islamabad. His colleagues in Islamabad knew he was Ahmadi. One distributor, an extremist Sunni Muslim, refused to work with him. During a meeting to try and resolve the issue, the distributor demanded that the father recite the *kailma* (Islamic testimony of faith), in breach of Pakistani law that prohibits Ahmadis reciting it. This was an attempt to entrap him into breaking the law. His manager did not intervene.

## **New Zealand**

[23] Fearing for his and his family's safety, the father decided to depart Pakistan and obtained New Zealand visitor visas for himself and his two daughters. On his arrival in New Zealand, he made contact with the New Zealand Ahmadiyya community and has been actively involved with it ever since.

[24] In New Zealand, the father visits the mosque on a daily basis, sometimes up to three times a day. He has also served as a secretary of hospitality, cooking for volunteers at community gatherings. He also met the Ahmadiyya community's global spiritual leader during his New Zealand visit.

[25] In New Zealand the father identifies as Ahmadi Muslim and wears his Ahmadi ring. He was unable to wear this in Pakistan because of his fear of being persecuted. If forced to return to Pakistan the father would deny his religion and would not wear his ring. He fears he would be identified as Ahmadi when seeking employment through his documentation including his MBA transcripts, passport and when applying for a new identification card in 2017. To apply for any employment Pakistanis are required to fill in a data form which requires them to declare their religion. This applies in both private and government positions. Similarly, when applying for housing he would have to disclose his religion or deny he was Ahmadi Muslim. He would be unable to live in Rabwah as he would not

find employment there. Further, the conditions in Rabwah have deteriorated with increasing violence in recent times.

[26] The father's wife, their sons and the father's father remain living in Pakistan. They are supported by funds the father sends from New Zealand. No family or financial support is available from family members in Pakistan, including his siblings. The family members remaining in Pakistan are each trying to support their own immediate families and are currently facing difficulties in doing so. One brother did set up his own business. However, this had to close after he was identified as Ahmadi, suffered harassment and the profitability of his business was affected. One of the father's brothers relocated to Abu Dhabi after experiencing difficulties because of his religion. The father's sisters have active roles in the women's wing of the Ahmadiyya community.

[27] In June 2013, the appellant's cousin [AA] was murdered at his home in [X town] by two Sunni extremists who shot him twice in the chest. Prior to this, he and his elder brother had been receiving threats because of their religion. Shortly thereafter, [AA's] mother (the father's aunt), died of a heart attack.

[28] A number of family members have successfully claimed refugee status abroad. The father's two nephews and a niece have been granted refugee status in Canada. The father produced to the Tribunal their refugee determination decisions which corroborate the father's account including of the murder of his cousin. The father also has relatives in his extended family who have been granted refugee protection in Germany on the basis of their Ahmadi religion.

### **The Elder Daughter's Evidence**

[29] The elder daughter is 16 years old and was born into the Ahmadi faith. Growing up she always knew that she was Ahmadi and that this was something that she should not disclose to other Muslims as they did not like her faith. Her parents did not share a lot of information about the risks they faced, as they did not want for her and her siblings to be scared. However, after the 2010 attacks on their mosques, she learnt that people did not like them.

[30] In Pakistan, the elder daughter attended a private school which was not linked to the Ahmadiyya community. While at school, one of her teachers gave a lecture about how Ahmadi Muslims were not Muslim. Her parents contacted the school to complain, however the teacher was not sanctioned.

[31] The elder daughter is currently in Year 11 of her schooling. She wishes to attend university in a couple of years to study towards a medical degree. In Pakistan, she would risk not being granted entry to tertiary study as she would be questioned on her religion in the admissions process.

[32] In New Zealand, the elder daughter regularly attends mosque. She was unable to do this due to security concerns in Pakistan. She greatly enjoys attending mosque and meetings with the community's women's wing. In New Zealand, if people ask her what religion she is she tells them she is Ahmadi Muslim. If returned to Pakistan, she would not be able to say this for fear of the consequences.

[33] The elder daughter is aware that her father's cousin was shot in Lahore. She had met him at family weddings and at the house on a few occasions. She is also aware that family members have been granted refugee status in other countries because of their faith.

### **The Younger Daughter's Evidence**

[34] The younger daughter is 13 years old. She came to New Zealand with her father and sister approximately two years ago. She is currently in Year 8 at a New Zealand intermediate school. The younger daughter knows that she and her family have been threatened because they are Ahmadi Muslims. Growing up she thought she was the same as other children until she realised that they did not watch Ahmadi programmes on satellite television. Her father informed her that they were different and not to tell her friends because their safety would be threatened if they did.

[35] The younger daughter is unaware of many of the bad things that had happened in Pakistan as she was young and her parents did not want to concern her. She wishes to study at university in the future and be reunited with all her family in a place where they can live safely as Ahmadis.

### **Evidence of [BB]**

[36] [BB] is currently involved at a high level within the Ahmadiyya Muslim Jama't New Zealand. He has held this position for some years. The community has 400 members in New Zealand and he has personal contact with all the members.

[37] [BB] first met the appellants on their arrival in New Zealand. The Ahmadiyya community in New Zealand undertook its formal verification processes of the family, which confirmed that they are Ahmadi. [BB's] wife also had contact with the father's wife in Rabwah, when some presents were sent back with [BB's] wife for the family.

[38] [BB] is convinced that the family are Ahmadi.

[39] [BB] is aware that the appellants fled to New Zealand out of fear for their safety because of their Ahmadi religion. He understands that the father experienced work difficulties and an attempt to entrap him was made in relation to his religion, so he would be imprisoned.

[40] [BB] also stated that conditions are deteriorating for the Ahmadiyya community in Pakistan. Rabwah which was previously considered "safe", is no longer. He referred to news he received out of Pakistan on a daily basis of attacks against members of the community.

[41] [BB] said that, in his opinion, the daughters would face discrimination, ostracism and receive a substandard education due to being members of the Ahmadiyya community. They would be unable to disclose their religion if they wished to enter college. If they did, they would risk being denied entry. [BB] spoke of the governor of Punjab who was murdered for his defence of Ahmadiyya community medical students who had been expelled. After his intervention, the students were reinstated. The governor was then murdered.

### **Material and Submissions Received**

[42] The Tribunal has received the Refugee Status Branch file, a copy of which has been provided to the appellants. On behalf of the appellants, Mr Mansouri-Rad lodged written submissions dated 11 July 2014 together with the following:

- (a) an updated statement from the father, dated 30 June 2014;
- (b) a statement from the elder daughter dated 30 June 2014;
- (c) a letter dated 30 June 2014 from [BB];
- (d) newspaper articles confirming the murder of [AA] including an article which contains a photograph;
- (e) family photographs showing the late [AA] and the father;

- (f) articles relating to Sunni Muslim conferences at which clerics called for persecution of the Ahmadiyya community;
- (g) further articles recording the murder of Ahmadis while in police custody and a doctor from the United States who was volunteering in a Pakistani hospital;
- (h) the father's nephew's documentation relating to his successful claim to refugee status in Canada;
- (i) scanned photographs of graffiti on family members' walls;
- (j) country information relating to the destruction of mosques;
- (k) copy of the application form for a Pakistani national identity card requesting the applicant identify their religion;
- (l) an article relating to the murder of a young Ahmadi boy in Islamabad;
- (m) scanned photographs of protests by Sunni Muslims outside the Ahmadiyya community in Auckland and a pamphlet distributed by them stating that the Ahmadi religion is not Islam; and
- (n) extracts from a report from the Abbatabad Commission regarding Osama Bin Laden's capture.

[43] During the hearing counsel also produced the following:

- (a) Notice of Decision from the Immigration and Refugee Board of Canada granting refugee status to the father's niece and nephew;
- (b) items of country information on the risks faced by religious minorities in Pakistan;
- (c) country information on the problems faced in education by the Ahmadiyya Muslim community 2008 to 2012;
- (d) school reports for the two daughters; and
- (e) the father's identification cards including membership of the Ahmadiyya community in New Zealand and the card issued following the 2010 Lahore bombings.



## **ASSESSMENT**

[44] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellants as:

- (a) refugees under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) protected persons under the 1984 Convention Against Torture (section 130); and
- (c) protected persons under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[45] In determining whether the appellants are refugees or protected persons, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellants’ accounts.

### **Credibility**

[46] The Tribunal finds the appellants’ accounts are credible. The father gave detailed evidence to the Tribunal which was consistent both with the evidence previously provided, all documentation provided, the daughters’ evidence, witness evidence from [BB], country information, the successful refugee determinations of family members abroad and photographs confirming the identity of the father’s cousin. The Tribunal accepts the entirety of the appellants’ accounts.

### **Findings of Fact**

[47] The father and his two daughters are devout Ahmadi Muslims who have consistently denied their religion in Pakistan, keeping it a secret from all but others in the Ahmadiyya Muslim community, out of fear of the consequences. The father has been actively involved in the Ahmadiyya community in Pakistan and on two occasions held office as a community leader. The father witnessed the aftermath of the 2010 Lahore bombings at mosques where he worshipped. Following this, the practice of their faith was constrained and predominantly occurred in underground settings.

[48] Following the 2010 Lahore bombings, the father disclosed his religion in his place of employment. As a result of this, he experienced harassment and

discrimination in the workplace. An attempt was made to force him to break the law by reciting the *kailma*. This would have resulted in his imprisonment for asserting the Ahmadiyya Muslim faith was Islam.

[49] The appellants' family members also suffer discrimination in their employment, and are unable to provide any financial or other support to the appellants. In 2013, the father's cousin was murdered because of his faith. The father's nephews and niece have been granted refugee protection in Canada and other family members have been granted protection in Germany.

[50] Since their arrival in New Zealand, the father and his two daughters have been actively involved in the Ahmadiyya community in New Zealand. Here, they are able to publicly disclose their faith, something they wish to do.

[51] It is on these facts that the appeals fall to be assessed.

### **The Refugee Convention**

[52] Section 129(1) of the Act provides that:

"A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[53] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[54] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **Assessment of the Claim to Refugee Status**

[55] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[56] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008), at [57].

[57] It is necessary first to address the country information as to the treatment of Ahmadis in Pakistan.

### *Historical background*

[58] In the interests of brevity, where the following background is uncontroversial, sources have not been given.

[59] The Ahmadi movement is named after its founder, Mirza Ghulam Ahmad, who was born in 1835 in Qadian, in the Punjab in India. It is a Muslim movement which follows the teachings of the Qur’an. Ahmad saw himself as chosen by Allah to reform and renew Islam. Followers see him as a messiah and a prophet.

[60] In the early 20th century, the movement split into two. One branch took the name “Qadiani”, after Ahmad’s birthplace (the term is now used pejoratively by other Muslims), and emphasised Ahmad’s claim to be a prophet. The second group (the Lahore Party), who see him as a reformer only are, today, dwindling. The ‘anti-Ahmadi’ sentiment is predominantly focussed on the Qadiani Ahmadis.

[61] In 1947, following the partition of India and Pakistan, the community moved its religious headquarters from Qadian to Rabwah (also known as Chenab Nagar), on the Chenab River in Punjab, Pakistan. Today, it has a population of 70,000, of which 97 per cent are Ahmadis. Local authorities, however, including the police and security forces, are predominantly non-Ahmadi.

[62] In 1974, Prime Minister Zulfikar Bhutto amended the Constitution to declare Ahmadis to be non-Muslims. A 1984 law then barred Ahmadis from calling their places of worship mosques or from proselytising in “any way, directly or indirectly”.

[63] The Ahmadi faith is moderate, stressing non-violence and tolerance of other faiths. Ahmadis say that Ahmad was not a “law-giving” prophet and his task was only to propagate the laws enunciated by Mohammed. But few mainstream Muslims accept this, claiming the faith is heretical for implying that Mohammed was not the final prophet. An insightful discussion of the real reasons for the emergence of Muslim opposition to the Ahmadi faith is to be found in “A Marked Life” by Pakistani journalist Saba Imtiaz, who has written extensively on the predicament of Ahmadis in Pakistan, at [www.sabaimtiaz.com](http://www.sabaimtiaz.com):

“Purging Ahmadis from the mainstream Islamic faith has been a triumph for the right-wing in Pakistan. The campaign began just a few years after the creation of Pakistan. In 1953, anti-Ahmadi riots broke out in Punjab, stemming from demands by right-wing groups to declare Ahmadis non-Muslims and remove the influential foreign minister, Sir Chaudhry Zafrullah, Khan and other Ahmadi officials from the government. The riots were preceded by attacks on Ahmadi mosques and officers, a campaign of hate speech against Ahmadiyya community leaders and the foreign minister, and calls for Ahmadis to be killed.

A judicial commission that investigated the protests, and the *Majlis-e-Ahrar* group that led them, found that the riots were well organized, supported by sections of the press, religious leaders and politicians. The position that Ahmadis held in society and politics rankled the *Ahrar*, as did their own lack of political influence since the *Ahrar* had opposed the creation of Pakistan in the 1940s. Using religion and the politics of blasphemy became a convenient way for the *Ahrar* to create a support base in Pakistan and declare that Ahmadis had no space in an Islamic state. This has set a pattern that is now cemented in Pakistan, particularly where allegations of blasphemy are concerned.”

[64] Conditions for Ahmadis in Pakistan were recently considered by the Tribunal in *AP (Pakistan)* [2013] NZIPT 800401-404 and *AV (Pakistan)* [2013] NZIPT 800275-276. It is not intended to repeat *in extenso* what was said there. Country information published subsequent to those decisions by the United States Department of State in its *Report on International Religious Freedom: Pakistan* (20 May 2013) summarises the situation as follows:

“A 1974 constitutional amendment declared that Ahmadis are non-Muslims. Sections 298(b) and 298(c) of the penal code, commonly referred to as the “anti-Ahmadi laws,” prohibit Ahmadi Muslims from calling themselves Muslims, referring to their religious beliefs as Islam, preaching or propagating their religious beliefs, inviting others to accept Ahmadiyya teachings, or insulting the religious feelings of Muslims. The punishment for violation of these provisions is imprisonment for up to three years and a fine. Most politicians oppose any amendments to the constitution affecting its Islamic clauses, especially the ones relating to Ahmadi Muslims.

Freedom of speech is subject to “reasonable restrictions in the interest of the glory of Islam,” as stipulated in sections 295(a), (b), and (c) of the penal code. The

consequences of contravening the country's blasphemy laws are death for "defiling Prophet Muhammad," life imprisonment for "defiling, damaging, or desecrating the Quran," and 10 years' imprisonment for "insulting another's religious feelings." Separately, under the Anti-Terrorism Act (ATA), any action, including speech, intended to incite religious hatred is punishable by up to seven years' imprisonment. In cases in which a minority group claims its religious feelings were insulted, the blasphemy laws are rarely enforced, and cases are rarely brought to the legal system. The law requires that a senior police official investigate any blasphemy charge before a complaint is filed.

...

The government designates religious affiliation on passports and requests religious information in national identity card applications. A citizen must have a national identity card to vote. Those wishing to be listed as Muslims must swear their belief that the Prophet Muhammad is the final prophet, and denounce the Ahmadiyya Muslim movement's founder as a false prophet and his followers are non-Muslim. The provision prevents Ahmadi Muslims from obtaining legal documents and puts pressure on members of the community to deny their beliefs in order to enjoy citizenship rights, including the right to vote. Many Ahmadis are thus effectively excluded from taking part in elections.

...

Violent extremists also targeted Muslims who advocated tolerance and pluralism. There were scores of attacks on Sufi, Hindu, Ahmadiyya Muslim, Shia, and Christian gatherings and religious sites, resulting in numerous deaths and extensive damage. Some religious groups protested against public debate about potential amendments to the blasphemy laws or against alleged acts of blasphemy."

[65] In its 2013 International Religious Freedom report, the United States Department of State states that:

"Ahmadiyya community leaders expressed continued concern over authorities' targeting and harassing Ahmadis, and frequently accusing Ahmadis of blasphemy, violations of "anti-Ahmadi laws," or other crimes. The vague wording of the provision forbidding Ahmadis from directly or indirectly identifying themselves as Muslims enabled officials to bring charges against members of the community for using the standard Muslim greeting and for naming their children Muhammad. According to Ahmadiyya leaders, between January and September authorities charged 26 Ahmadis in seven separate cases. Most of these cases were filed in connection with "anti-Ahmadi laws." Ten Ahmadis were charged with blasphemy for allegedly defiling the Quran. Two others were charged under a terrorism clause. During the year 18 Ahmadis were arrested in matters relating to their faith and spent time in prison before being released on bail. In November police arrested physician Masood Ahmad for "posing as a Muslim" after he was videotaped reading a verse from the Quran. Ahmad remained in custody awaiting trial at year's end.

The constitution provides for the right to establish places of worship and train clergy, but in practice the government restricted this right for religious minorities, especially Ahmadis. District-level authorities consistently refused to grant permission to construct places of worship for religious minorities, especially for the Ahmadiyya and Bahai communities, citing the need to maintain public order. Ahmadis reported their mosques and community lands were routinely confiscated by local authorities and given to the majority Muslim community. Ahmadis also reported incidents in which authorities tried to block construction or renovation of their places of worship. The law prohibits Ahmadis from reciting or relating to the *kalima* (Islamic testimony of faith), and authorities forcibly removed the *kalima* from Ahmadiyya places of worship. District governments often refused to grant Ahmadis

permission to hold public events. According to the Ahmadiyya community, between 1984 (when the “anti-Ahmadi laws” were promulgated) and 2013, the authorities sealed 30 Ahmadi mosques and barred construction of 46 mosques, while 28 Ahmadi mosques were demolished or damaged, 13 mosques were set on fire, and 16 mosques were forcibly occupied.

During the registration process for the general elections in May, the Election Commission of Pakistan required members of the Ahmadiyya community to disavow the founder of their faith or, alternatively, “admit” they were not Muslims. As a result, nearly all of the country’s Ahmadis were unable to vote in the elections.”

[66] The report also states that discrimination persists against Ahmadis in admission to higher education institutions.

[67] In its 2014 *World Report*, Human Rights Watch records that:

“Members of the Ahmadiyya religious community continue to be a major target of blasphemy prosecutions and are subjected to longstanding anti-Ahmadi laws across Pakistan. In 2013, they faced increasing social discrimination as militant groups accused them of illegally “posing as Muslims,” barred them from using their mosques in Lahore, vandalized their graves across Punjab province, and freely engaged in hate speech, inciting violence against them as authorities looked the other way or facilitated extremists.”

[68] As to the extent to which attacks against Ahmadis are reported, the Tribunal in *AM (Pakistan)* [2013] NZIPT 800274 considered a recent United Kingdom decision of the Upper Tribunal (Immigration and Asylum Chamber), *MN and others (Ahmadis – country conditions – risk) Pakistan* CG [2012] UKUT 00389 (IAC), delivered on 13 November 2012, which had made the following comment:

“In the context of the number of incidents recorded in the past 24 years, it may be thought that the risk to Ahmadis is not as great as has been urged in these appeals. We accept however the explanation in the submissions from the appellants’ representatives that this is in part due to the way in which Ahmadis in general deal with their difficulties in Pakistan by self denial, civil obedience and by keeping a low profile. Although some of the incidents reported on [www.thepersecution.org](http://www.thepersecution.org) and its sister site might suggest otherwise, on the whole, it appears to have been a successful approach. With this moderation of the ways in which Ahmadis express and practise their faith including its propagation, we accept that there have been fewer prosecutions and complaints made than might otherwise have been the case. We accept the evidence of Dr W about the increasing Islamisation in Pakistan which undoubtedly would heighten the risks for Ahmadis who chose to flout the law and we accept that the need to keep a low profile is likely to have increased.”

[69] It is against this background that the appellants’ claims are to be measured.

*Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to Pakistan?*

[70] Given the need for the appellants to establish a sustained or systemic violation of core human rights, the starting point for an assessment of 'being persecuted' must be the identification of the rights at issue.

### *Freedom of religion*

[71] The right to freedom of religion is contained in Article 18 of the 1966 International Covenant on Civil and Political Rights, which relevantly provides:

#### **"Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

[72] There is a non-derogable right to hold religious beliefs and there is a right to manifest those beliefs in worship, observance, practice and teaching, subject only to such restriction as is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Whether such measures are necessary is to be determined by reference to standards justified at international law, not the view of the state asserting the necessity.

[73] In line with the Tribunal's jurisprudence, it is no answer to a breach at the core of a fundamental human right to require a person to exercise that right discreetly, or to abandon the right, where the sole reason for doing so is to avoid being persecuted. See, in this regard, *Refugee Appeal No 74665* (7 July 2004), at [113]-[115], notably at [114]:

"By requiring the refugee applicant to abandon a core right the refugee decision-maker is requiring of the refugee claimant the same submissive and compliant behaviour, the same denial of a fundamental human right, which the agent of persecution in the country of origin seeks to achieve by persecutory conduct. The potential complicity of the refugee decision-maker in the refugee claimant's predicament of "being persecuted" in the country of origin must be confronted. The issue cannot be evaded by dressing the problem in the language of well-foundedness, that is, by asserting that the claim is not a well-founded one because the risk can or will be avoided."

[74] The approach in *Refugee Appeal No 74665* has been endorsed by the United Kingdom Supreme Court in both *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31 and, more recently, in *MN and others (Ahmadis – country conditions – risk) Pakistan* CG [2012] UKUT 00389 (IAC).

[75] Country information clearly confirms that there is widespread state-sanctioned discrimination against Ahmadis in Pakistan, including in Lahore. A range of measures, aimed at marginalising and intimidating Ahmadis on the basis of their religion, operate throughout Pakistan. As previously identified by the Tribunal in *AP (Pakistan)* [2013] NZIPT 800401-404 at [98]:

“That such acts are state-sanctioned is evident from the constitutional denial of the right of Ahmadis to call themselves Muslim, legislation which criminalises almost any public manifestation of Ahmadi beliefs, the frequent failure of police and courts to investigate, prosecute and punish offending against Ahmadis, the complicity of the police and courts in the bringing of specious charges against Ahmadis and the systemic failure of all branches of government to curb, or even speak out against, the violent rhetoric which emanates from mosques and those at the helm of the Sunni Muslim faith in Pakistan.”

[76] The appellants have provided credible evidence that the way in which they wish to manifest their religion, as they are currently able to in New Zealand, would not be possible if they were to return to Pakistan.

[77] The Tribunal is satisfied that the father and daughters self-identity as Ahmadis and their desire to be able to publicly identify themselves as Ahmadis, are at the core of their faith. The father’s commitment to his faith is also exemplified in the leadership positions he has held within the Ahmadiyya community. The daughters have been taught to deny their faith in Pakistan for their own protection. However, since being in New Zealand they have openly identified as Ahmadi, something that is important to them.

[78] It is important for all appellants to be able to identify themselves as Ahmadi, if and when the occasion arises. However, in Pakistan, they would be forced to deny their religion because they fear the consequences which would result from disclosure.

[79] On the basis of the available country information, if the father returns to Pakistan it is accepted that, on some occasions, he will need to hide and even deny his religion, in order to avoid repercussions. This will occur when seeking employment, in the course of ongoing employment and to gain entry to mosques. The Tribunal has considered whether he has support networks in Pakistan which would operate to reduce the risk of harm below the level of a real chance. See, for



example, the discussion in *AV (Pakistan)* [2013] NZIPT 800275–276, particularly at [73]-[76]. Unlike the appellants in that decision, the appellants in the present appeal do not have family support to which they can return. Wider family members, including siblings, face difficulties in financially supporting themselves due to employment difficulties as Ahmadis. While one brother did temporarily have a family business, this was forced to shut down after anti-Ahmadi harassment resulted in the business having to close. The father would be compelled to find whatever work he could on the open market. There is no prospect of him returning to a livelihood within the protection of an existing family business or in which he could be assured of finding a position with an employer sympathetic to Ahmadis. Because of this, the appellants' support networks are unable to offer the protection that was available to the appellants in *AV (Pakistan)* [2013] NZIPT 800275-276.

[80] While the father's wife (the mother) and sons are currently living in Rabwah, the father would not be able to find employment there and would be forced to return to other parts of Pakistan.

[81] The Tribunal also finds that there is a real chance that the two daughters will be identified by the general population as Ahmadi in the coming years as they seek to access higher education. The elder daughter will soon be of age to apply for university, at which point she will have to disclose her religion or deny it, resulting in a breach of the right to freedom of religion. The younger daughter, whilst some years off tertiary study, will face the same risks as her sister.

#### *Conclusion on well-foundedness*

[82] For all the reasons given each of the appellants has a well-founded fear of being persecuted.

#### *Is there a Convention reason for the persecution?*

[83] The Convention reason for the predicament faced by the appellants is religion.

#### **Conclusion on Claim to Refugee Status**

[84] For the foregoing reasons the appellants are each entitled to be recognised as refugees.

## The Convention Against Torture

[85] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

## Assessment of the Claim under Convention Against Torture

[86] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

[87] The Tribunal has found the appellants to be refugees within the meaning of section 129 of the Act. Each is, therefore, protected from *refoulement* to Pakistan by operation of section 164 of the Act (the exceptions to which do not apply here). None of them can be returned to Pakistan. Accordingly, there are no substantial grounds for believing that any of them are in danger of being subjected to torture if deported from New Zealand.

## The ICCPR

[88] Section 131 of the Act provides that:

“(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.”

## Assessment of the Claim under the ICCPR

[89] By virtue of section 131(5):

- “(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.”

## Conclusion on Claim under ICCPR

[90] Again, the Tribunal has found the appellants to be refugees within the meaning of section 129 of the Act. Each is therefore protected from *refoulement* to Pakistan by operation of section 164 of the Act, the exceptions to which do not apply here. None of them can be returned to Pakistan. Accordingly, there are no substantial grounds for believing that any of them are in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

## CONCLUSION

[91] For the foregoing reasons, the Tribunal finds that each of the appellants:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[92] The appeals are allowed.

Certified to be the Research  
Copy released for publication

L Moor  
Member

“L Moor”  
L Moor  
Member